

## REMARKS

Claims 53-74 are pending in the current application and have been rejected. Reconsideration is requested.

Claims 53-74 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-54 of U.S. Patent No. 6,558,400 to Decm. A terminal disclaimer is being filed concurrently herewith signed by John S. Nagy, attorney of record, in compliance with 37 C.F.R. §1.321(c) to obviate these double patenting rejections.

Claims 53, 55-64 and 66-70 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Pietrafitta et al., U.S. Pat. No. 5,355,897. Applicant respectfully traverses this rejection.

Pietrafitta does not disclose "positioning a device trans-orally to a position within the stomach cavity," as recited by independent claims 53 and 64. Pietrafitta discloses performing the pyloroplasty through the abdominal wall and into the abdominal cavity. See Pietrafitta col. 6, lines 47-49 and FIG. 8. Accordingly, claims 53, 55-64 and 66-70 are allowable over Pietrafitta for this reason.

Also, Pietrafitta discloses a method for performing a pyloroplasty, and the treatment site is within the pylorus, not within the stomach as claimed in the current application. Pietrafitta defines "pyloroplasty" at col. 1, lines 40-44 as "a surgical procedure which involves the reshaping of the pylorus and the subsequent attachment of the subsequent attachment of the lower part of the stomach proximal to the pylorus to the anterior portion of the duodenum distal to the pylorus." This section from Pietrafitta describes the pylorus as being located between the lower part of the stomach and the anterior portion of the duodenum, and does not teach or suggest that the pylorus is within or a part of the stomach. Further, col. 7, lines 2-37 of

Pietrafitta discloses that the pyloroplasty device is positioned within the pylorus (not the distal portion of the stomach) and the pylorus is dilated until tissue from the pylorus is positioned in gap 12 of the device. Further, this section of Pietrafitta discloses that staples are driven through the tissue in gap 12 of the device while a cutting blade 68 cuts a section 156 of the pylorus contained within the gap. Therefore, the treatment site disclosed in Pietrafitta is not located within the stomach as claimed, but is within the pylorus.

Further, Pietrafitta does not form a pouch within the stomach as claimed in the current application. Pietrafitta places a row of staples in tissue of the pylorus as shown in FIGS. 10 and 11, which does not form a pouch. For all of these reasons, claims 53, 55-64 and 66-70 are allowable over Pietrafitta.

Independent claim 64 recites "acquiring tissue from at least two areas of the interior of the stomach cavity using the device." As shown in FIGS. 8-10 of Pietrafitta, only one section of tissue from the pylorus is positioned in the gap 12 of the device. Therefore, Pietrafitta does not disclose a method of acquiring tissue from at least two areas of the interior of the stomach as claimed in the current application. Therefore, claim 64 and those claims that depend therefrom are allowable over Pietrafitta for this additional reason.

Claims 53, 55-64 and 66-70 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Baker, U.S. Pat. No. 6,197,022. Applicant respectfully traverses this rejection.

Baker discloses methods and devices for controlled thermal energy delivery to a selected tissue volume in the interior of a body to injure cells inducing the healing response and altering the structural support of flexibility characteristics of the target tissue, and to cause shrinkage of collagen in the tissue volume to further alter characteristics of the tissue volume. See Baker col. 5, lines 57-67. Respectfully, it is asserted that Examiner has mistakenly cited to FIGS. 1-9 of

Baker for disclosing a method for reducing a stomach cavity. FIGS. 7-9 of Baker actually refer to a patient's bladder and urethra, and to a method of using a device for thermally treating tissue around a patient's sphincter. See Baker col. 7, lines 21-41. Only the title and Field Of The Invention section of the Baker patent refers to a treatment for gastro-esophageal reflux disease by increasing the rigidity or the length of the lower esophageal sphincter by delivering thermal energy to the target site. Baker does not disclose acquiring tissue within a stomach cavity and forming a pouch as currently claimed. According, claims 53, 55-64 and 66-70 are allowable over Baker.

Claims 54, 65, and 71-74 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Pietrafitta. The previous arguments regarding Pietrafitta are reasserted here. Claim 54 depends from claim 53, and claim 65 depends from claim 64, and both are therefore also allowable because Pietrafitta does not disclose or suggest all of the limitations found in independent claims 53 and 64. Further, independent claim 71 recites "positioning a device trans-orally to a position within the stomach cavity; acquiring tissue from the interior of the stomach cavity with the device; and forming a pouch ...." Pietrafitta does not disclose or suggest positioning a device trans-orally within the stomach cavity and then using the device to acquire tissue from the interior of the stomach cavity to form a pouch. Therefore, claim 71 and those claims that depend therefrom are allowable over Pietrafitta.

Claims 54, 65, and 71-74 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Baker. The previous arguments regarding Baker are reasserted here. Claim 54 depends from claim 53, and claim 65 depends from claim 64, and both are therefore also allowable because Baker does not disclose or suggest all of the limitations found in independent claims 53 and 64. Further, independent claim 71 recites "acquiring tissue from the interior of the

stomach cavity with the device; and forming a pouch ...." Baker does not disclose or suggest using a device to acquire tissue from the interior of the stomach cavity to form a pouch. Therefore, claim 71 and those claims that depend therefrom are allowable over Baker.

In view of the foregoing, Applicant respectfully submits that all pending claims are in condition for allowance. Reexamination and reconsideration of the application are respectfully requested and allowance at an early date is solicited.

The Commissioner is authorized to charge deposit account no. 06-2425 for any unforeseen fees arising from the filing of this paper.

Respectfully submitted,  
FULWIDER PATTON LLP

Dated: November 30, 2007

By: /douglas r. peterson/  
Douglas R. Peterson  
Registration No. 53,458

Howard Hughes Center  
6060 Center Drive, Tenth Floor  
Los Angeles, CA 90045  
Telephone: (310) 824-5555  
Facsimile: (310) 824-9696  
Customer No. 24201  
203473.1